



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD269

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments

SUMMARY: NMFS plans to issue a permit for a period of three years to authorize the incidental, but not intentional, taking of three stocks of marine mammals listed as threatened or endangered under the Endangered Species Act (ESA) by the Hawaii deep-set and shallow-set longline fisheries. In accordance with the Marine Mammal Protection Act (MMPA), NMFS must issue this permit provided that it can make the determinations that: the incidental take will have a negligible impact on the affected stocks; a recovery plan for all affected stocks of threatened or endangered marine mammals has been developed or is being developed; and as required by the MMPA, a take reduction plan and monitoring program have been implemented and vessels in the Hawaii deep-set and shallow-set longline fisheries are registered. NMFS has made a preliminary determination that incidental taking from commercial fishing will have a negligible impact on the endangered humpback whale, Central North Pacific (CNP) stock; sperm whale, Hawaii stock; and false killer whale, Main Hawaiian Islands (MHI) insular stock. Recovery plans have been completed for humpback and sperm whales, and a recovery plan has been initiated for MHI insular false killer whales. NMFS solicits public comments on the draft

negligible impact determination and on the proposal to issue a permit to vessels that operate in these fisheries for the taking of affected endangered stocks of marine mammals.

DATES: Comments must be received by [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: The draft Negligible Impact Determination and list of references contained in this notice are available in electronic form via the Internet at:

[http://www.fpir.noaa.gov/DIR/dir\\_public\\_documents.html](http://www.fpir.noaa.gov/DIR/dir_public_documents.html).

You may submit comments, identified by NOAA-NMFS-2014-0052, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0052](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0052), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Mail: Send comments or requests to: Alecia VanAtta, Assistant Regional Administrator, Protected Resources Division, Pacific Islands Region, 1845 Wasp Blvd., Building 176; Honolulu, HI ~~Hawaii~~ 96818. Comments may also be faxed to (808) 973-2941.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A

in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dawn Golden, NMFS Pacific Islands Region, (808) 725-5144, or Shannon Bettridge, NMFS Office of Protected Resources, (301) 427-8402.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 et seq., states that NOAA's National Marine Fisheries Service (NMFS), as delegated by the Secretary of Commerce, shall for a period of up to three years allow the incidental taking of marine mammal species listed under the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq., by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) incidental mortality and serious injury (M&SI) will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

NMFS is considering the issuance of a permit under MMPA section 101(a)(5)(E) to vessels registered in the Hawaii deep-set longline fishery to incidentally take individuals from three stocks of threatened or endangered marine mammals: the Central North Pacific (CNP)

stock of humpback whales (Megaptera novaeangliae), the Hawaii stock of sperm whales (Physeter macrocephalus), and the MHI insular stock of false killer whales (Pseudorca crassidens); and to vessels registered in the Hawaii shallow-set longline fishery to incidentally take individuals from the CNP stock of humpback whales. The data for considering these authorizations were reviewed coincident with the preparation of the 2014 MMPA List of Fisheries (LOF or List) (79 FR 14418, March 14, 2014), the 2013 marine mammal draft stock assessment reports (SARs) (Carretta et al. 2013; Allen and Angliss 2013), recovery plans for humpback and sperm whales, the False Killer Whale Take Reduction Plan, and other relevant sources.

The vessels operating in the Hawaii deep-set and the shallow-set longline fisheries are in the ranges of affected stocks and are currently considered for authorization. A detailed description of these fisheries can be found below. The Hawaii deep-set longline fishery is the only Category I fishery operating around Hawaii. The Hawaii shallow-set longline fishery is a Category II fishery; all other Category II fisheries that may interact with the marine mammal stocks observed off the coast of Hawaii are State-managed and are not considered for authorization under this permit. Participants in Category III fisheries are not required to obtain incidental take permits under MMPA section 101(a)(5)(E) but are required to report injuries or mortalities of marine mammals incidental to their operations.

#### Basis for Determining Negligible Impact

As described above, prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if M&SI incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfies this requirement through completion of a negligible impact determination (NID).

NMFS clarifies that incidental M&SI from commercial fisheries includes M&SI from entanglement or hooking in fishing gear. Indirect effects, such as the effects of removing prey from habitat, are not included in this analysis. A biological opinion prepared under ESA section 7 considers direct and indirect effects of Federal actions and, thus, contains a broader scope of analysis than is required by MMPA section 101(a)(5)(E).

Although the MMPA does not define “negligible impact,” NMFS has issued regulations providing a qualitative definition of “negligible impact,” as defined in 50 CFR 216.103 and, through scientific analysis, peer review, and public notice, developed a quantitative approach and, as it applies here, is “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” The development of the approach and process was outlined in detail in the current draft NID made available through this notice and was included in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (e.g. 72 FR 60814; October 26, 2010; for the CNP stock of humpback whales).

#### Criteria for Determining Negligible Impact

In 1999 NMFS adopted criteria for making negligible impact determinations for MMPA 101(a)(5)(E) permits (64 FR 28800; May 27, 1999). In applying the 1999 criteria to determine whether M&SI incidental to commercial fisheries will have a negligible impact on a listed marine mammal stock, Criterion 1 (total human-related M&SI is less than 10% of the potential biological removal level (PBR)) is the starting point for analysis. If this criterion is satisfied (i.e., total human-related M&SI is less than 10% of PBR), the analysis would be concluded, and the impact would be determined to be negligible. If Criterion 1 is not satisfied, NMFS may use

one of the other criteria as appropriate. The remaining criteria describe alternatives under certain conditions. Criterion 2 is satisfied if the total human-related M&SI is greater than PBR, but fisheries-related M&SI is less than 10% of PBR. If Criterion 2 is satisfied, vessels operating in individual fisheries may be permitted if management measures are being taken to address non-fisheries-related M&SI. Criterion 3 is satisfied if total fisheries-related M&SI is greater than 10% of PBR and less than PBR, and the population is stable or increasing. Fisheries may then be permitted subject to individual review and certainty of data. Criterion 4 stipulates that if the population abundance of a stock is declining, the threshold level of 10% of PBR will continue to be used. Criterion 5 states that if total fisheries-related serious injuries and mortalities are greater than PBR, permits may not be issued for that species or stock.

The time frame for this analysis includes the most recent 5-year period for which available data have been processed (January 1, 2007 through December 31, 2011). The NMFS Guidelines for the Assessment of Marine Mammal Stocks (GAMMS) and the subsequent GAMMS II provide guidance that, when available, the most recent 5-year time frame of commercial fishery incidental M&SI data is an appropriate measure of the effects of fishing operations on marine mammals (Wade and Angliss 1997). A 5-year time frame provides enough data to adequately capture year-to-year variations in take levels, while reflecting current environmental and fishing conditions, as they may change over time. Additionally, because the permit issued under MMPA section 101(a)(5)(E) is for a three-year period, the most up-to-date data available for complete years are used (i.e., 2007-2011).

#### Negligible Impact Determinations

The draft NID made available through this notice provides a complete analysis of the criteria for determining whether commercial fisheries off Hawaii are having a negligible impact

on the stocks of humpback whales, sperm whales, and MHI insular false killer whales. A summary of the analysis and subsequent negligible impact determinations follows.

#### Criterion 1 Analysis

Criterion 1 would be satisfied if the total human-related M&SI is less than 10% of PBR. The 5-year (2007-2011) annual average M&SI to the Hawaii stock of sperm whales from all human-caused sources is 0.7 animals, which is 6.89% of this stock's PBR of 10.2 (i.e., below the 10% of PBR [1.02] threshold). Since the beginning of the NMFS Hawaii longline observer program in 1995, no deaths of sperm whales have been attributed to the Hawaii deep-set or shallow-set longline fishery. However, in 2011 a sperm whale was reported seriously injured (prorated as 0.75 serious injury) after interacting with the Hawaii deep-set longline fishery. Two other interactions with sperm whales in 1999 and 2002 were considered non-serious injuries. Based on this low likelihood of interactions, considered together with the lack of impacts of other commercial fisheries and other human-caused impacts, Criterion 1 has been met. Therefore, NMFS determines that M&SI incidental to commercial fisheries will have a negligible impact on the Hawaii stock of sperm whales.

The 5-year (2007-2011) annual average M&SI to the CNP stock of humpback whales from all human-caused sources is 16.20 animals, which is 26.74% of this stock's PBR of 61.2 (i.e., above the 10% of PBR [6.1 animals] threshold). The total annual human-related M&SI for this stock of humpback whales is not less than 10% of PBR for the time frame considered.

The 5-year (2007-2011) annual average M&SI of the MHI insular false killer whale stock from all human-caused sources is estimated to be 0.1 animals, which is 33.3% of this stock's PBR of 0.3 (i.e., above the 10% of PBR [0.03] threshold). The total annual human-related

M&SI for this stock of humpback whales is not less than 10% of PBR for the time frame considered.

Criterion 1 was not satisfied for the CNP humpback and MHI insular false killer whales because the total annual human-related M&SI for these two stocks is not less than 10% of PBR for each stock for the time frame considered. As a result, other criteria must be examined for the CNP humpback and MHI insular false killer whale stocks.

#### Criterion 2 Analysis

Criterion 2 would be satisfied if the total human-related M&SI is greater than PBR, but fisheries-related M&SI is less than 10% of PBR. This criterion was not satisfied for either the CNP humpback or the MHI insular false killer whale because while total human-related M&SI (detailed above) is less than PBR for each stock, and total fisheries-related M&SI (detailed below) is greater than 10% PBR for each stock for the time frame analyzed.

#### Criterion 3 Analysis

Unlike Criteria 1 and 2, which examine total human-caused M&SI relative to PBR, Criterion 3 compares total fisheries-related M&SI to PBR. Criterion 3 would be satisfied if the total commercial fisheries-related M&SI (including state and federal fisheries) is greater than 10% of PBR and less than PBR for each stock for the time frame considered, and the populations of these stocks are considered to be stable or increasing. If the Criterion is met, vessels may be permitted subject to individual review and certainty of data.

The total fishery-related M&SI from all commercial fisheries for the CNP humpback stock is estimated at 9.35 animals, or 15.3% of the PBR (of 61.2) for the 5-year average from 2007-2011. This is greater than 10% of PBR (6.1 animals) and less than PBR (61.2 animals). The CNP humpback whale stock has a minimum population size of 7,469 and is estimated to be



growing at a rate of up to 7% per year. A total of 0.75 humpback whales were observed, estimated, or assumed to have been either killed or seriously injured in the two fisheries considered in this authorization during the 2007-2011 time period. Accordingly, Criterion 3 is satisfied for the time frame analyzed (2007-2011). Therefore, we determine that M&SI of the CNP humpback whale stock incidental to commercial fishing is having a negligible impact on the stock because of individual review of data regarding the stock, including increased growth rate of the stock, limited increases in M&SI due to the relevant fisheries, and the level of human-caused M&SI is below the estimated PBR.

The MHI insular stock of false killer whales meets the initial conditions of Criterion 3. Total commercial fisheries-related M&SI (0.1 animals per year) is greater than 10% of PBR (0.03 animals) and less than PBR (0.3 animals) for the 2007-2011 time period. Although there are some uncertainties in information regarding MHI insular false killer whales, such as abundance, M&SI estimates, and population trend, the best available information indicates that estimated levels of all human-caused M&SI as well as fisheries-related M&SI are both below the stock's PBR level. Below we summarize the uncertainties related to the MHI insular false killer whales M&SI estimate and the population trend.

NMFS considers three stocks of false killer whales (Hawaii pelagic, MHI insular, and Northwestern Hawaiian Islands stocks) to be at risk of interacting with Hawaii longline gear. For the Hawaii longline fisheries considered in this analysis, no MHI insular false killer whale deaths have been observed since the NMFS Hawaii longline observer program began in 1995. From 2004-2012, observers recorded three false killer whale interactions in the deep-set longline fishery and no false killer whale interactions in the shallow-set longline fishery in the MHI insular false killer whale range. In the deep-set longline fishery, observers also recorded three

interactions with unidentified blackfish, which are unidentified cetaceans known to be either a false killer whale or a short-finned pilot whale. Genetic sampling and photo identification are currently the only ways to distinguish MHI insular false killer whales from the other stocks, and these data were not collected from the animals involved in these interactions. When the stock identity of a false killer whale hooked or entangled by the longline fisheries within the overlap zone cannot be determined, NMFS prorates the interaction to either the pelagic or MHI insular stock using a model that assumes densities of MHI insular stock animals decline and pelagic stock densities increase with increasing distance from shore (McCracken 2010).

Based on an analysis conducted for this NID, including the expansion from observed interactions to an estimate of fleet-wide interactions based on the fishery's total effort and the proration of blackfish and false killer whales of unknown stock identity (MHI insular versus pelagic), we estimate that a total of 8.73 interactions occurred with MHI insular false killer whales in the deep-set longline fishery from 2004-2012, including both serious and non-serious injuries. This is a conservative estimate that potentially overestimates the fishery's actual impact on MHI insular false killer whales. The proration model does not account for the Northwestern Hawaiian Islands false killer whale stock that was identified in 2011. For example, in 2012 two observed false killer whale interactions occurred in the area where all three Hawaiian false killer whales stocks overlap, but at this time they can only be attributed (prorated) to the pelagic or MHI insular stocks. In addition, earlier interaction estimates are based on a much smaller abundance estimate for the pelagic false killer whale stock.

MHI insular false killer whales are believed to have declined markedly during the 1990s, although their current population trajectory is unknown (Oleson et al. 2010). However, it is anticipated that the longline fishery's impacts, which were a historical threat to this population,

have been or will be further reduced through the recently implemented False Killer Whale Take Reduction Plan (FKWTRP) measures (Carretta et al. 2013). NMFS published the FKWTRP on November 29, 2012 (77 FR 71260) to reduce the M&SI of Hawaii pelagic and MHI insular false killer whales in Hawaii's longline fisheries. The FKWTRP includes regulatory and non-regulatory measures, including: the required use of weak circle hooks, a minimum diameter for monofilament leaders and branch lines, extension of the Main Hawaiian Islands Longline Fishing Prohibited Area, annual training in mitigation techniques, establishment of a Southern Exclusion Zone and triggers for closure, and monitoring and reporting requirements.

Most of the FKWTRP's regulations went into effect on December 31, 2012, but gear requirements for the deep-set longline fishery went into effect on February 27, 2013. The measures have been in place for just over a year, and their effectiveness has not yet been fully evaluated. However, a model developed for this NID predicts that future annual M&SI for the MHI insular false killer whales will remain below the stock's PBR level, based on expected levels of longline fishing effort (McCracken 2014).

NMFS anticipates that continued implementation of the FKWTRP regulations will ensure that reduced rates of fisheries-related M&SI of MHI insular false killer whales are maintained in the deep-set longline fishery. Monitoring and reporting requirements under the FKWTRP will provide NMFS the information necessary to prevent and respond to any unexpected impacts. Based on the low likelihood of interactions, along with reliable rates of observer coverage in both the shallow- and deep-set longline fisheries, considered together with other human-caused impacts, NMFS concludes that Criterion 3 has been met. Therefore, NMFS determines that M&SI incidental to commercial fisheries will have a negligible impact on the MHI insular stock of false killer whales.

In conclusion, based on the criteria outlined in 1999 (64 FR 28800), the 2013 draft Alaska and Pacific SARs (Allen and Angliss 2013; Carretta et al. 2013), and the best scientific information and data available, NMFS has determined that for a period of up to three years, M&SI incidental to the Hawaii deep-set longline fishery and Hawaii shallow-set longline fishery will have a negligible impact on the CNP stock of humpback whales, the Hawaii stock of sperm whales, and the MHI insular stock of false killer whales. Therefore, vessels operating in these identified commercial fisheries within the range of the CNP humpback, Hawaii sperm whale, and MHI insular stocks may be permitted subject to their individual review and the certainty of relevant data, and provided that the other provisions of section 101(a)(5)(E) are met.

#### Description of Fisheries

The following are the Federally-authorized fisheries classified as Category I and II in the 2014 LOF (NMFS 2014), which are known to seriously injure or kill ESA-listed marine mammals incidental to commercial fishing operations. Detailed descriptions of those fisheries can be found in the Final Biological Opinion on the continued operation of the Shallow-set Longline Swordfish fishery, dated January 30, 2012(NMFS 2012a); the draft SARs (Carretta et al. 2013, Allen and Angliss 2013); and the draft NID.

In accordance with MMPA section 118(c), only those vessels in the Hawaii deep-set and shallow-set longline fisheries that have registered for a Marine Mammal Authorization Permit are authorized to take marine mammals incidental to their fishing operations. Vessels holding this permit must comply with the FKWTRP and implementing regulations. The longline fisheries are limited access fisheries, with 164 transferable permits of which approximately 130 are currently active. Vessels active in these fisheries are limited to 101 ft in length. Hawaii-based longline vessels vary their fishing grounds depending on their target species. Most effort

is to the north and south of the Hawaiian Islands between the equator and 40° N and longitudes 140° and 180° W; however, the majority of deep-set fishing occurs south of 20° N and the majority of shallow-set fishing occurs north of 20° N. The number of active vessels in the combined Hawaii-based deep-set and shallow-set longline fishery increased dramatically in the late 1980s and peaked at 141 vessels in 1991. The number of vessels in the combined longline fisheries has since ranged from 101 to 130. In 2011, 129 Hawaii-based longline vessels were active in the deep-set longline fishery. The deep-set longline fishery operates year-round, although vessel activity increases during the fall and is greatest during the winter and spring months. The annual number of trips for the Hawaii-based longline fisheries has remained relatively stable, but there was a shift from mixed-target and swordfish-target trips to tuna-target trips from the early 1990s up to 2002. In the years 2000-2003, this shift reflected the regulatory closure of the shallow-set and mixed-target fisheries. In 2004, the shallow-set longline fishery was reopened but participation was limited to only six trips. In 2011, there were 1,388 combined longline trips (1,306 deep-set and 182 shallow-set), which resulted in a combined total of 18,623 sets (17,155 deep-set and 1,468 shallow-set). Effort in the combined longline fishery, measured by the number of hooks set, has ranged from approximately 39 to 42 million hooks per year from 2007-2011.

#### Conclusions for Proposed Permit

Based on the above assessment and as described in the accompanying draft NID, NMFS concludes that the incidental M&SI from the Hawaii deep-set and shallow-set fisheries will have a negligible impact on the CNP stock of humpback whales, the Hawaii stock of sperm whales, and the MHI insular stock of false killer whales. The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the

human environment. The impacts on the human environment of continuing the Hawaii deep-set and shallow-set longline fisheries, including the taking of threatened and endangered species of marine mammals, were analyzed in the Regulatory Amendment to the Western Pacific Pelagic Fishery Ecosystem Plan: Revised Swordfish Trip Limits in the Hawaii Deep-set Longline Fishery to Reduce Regulatory Discards with an EA (NMFS and WPFMC 2012); the False Killer Whale Take Reduction Plan EA (NMFS 2012b); Amendment 18 to the Pelagics FMP and Final SEIS (NMFS and WPFMC 2009); Draft Amendment 7 to the Pelagics FEP and draft EA (NMFS 2013b), and in the Final Biological Opinion prepared for the Hawaii shallow-set longline fishery (NMFS 2012a) and the draft Biological Opinion for the Hawaii deep-set longline fishery, currently in preparation, pursuant to the ESA. NMFS has prepared a record of environmental consideration which concludes that because this proposed permit would not modify any fishery operation and the effects of the fishery operations have been evaluated fully in accordance with NEPA, no additional NEPA analysis is required for this permit. Issuing the proposed permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents.

#### Recovery Plans

Recovery Plans for humpback whales and sperm whales have been completed (see <http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals>). A Recovery Plan has been initiated for the MHI insular false killer whale (78 FR 60850 October 2, 2013). Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

#### Vessel Registration

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities.

Further, section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. Registration for the Hawaii longline fisheries has been integrated into the existing permit process, and all permitted participants in the Hawaii deep-set and shallow-set longline fisheries are issued annual Marine Mammal Authorization Program certificates with their new or renewed permits. Therefore, vessel registration for an MMPA authorization is integrated through those programs in accordance with MMPA section 118.

#### Monitoring Program

The Hawaii longline fisheries have been observed by NMFS observers since the mid-1990s. Levels of observer coverage vary over time but are adequate to produce reliable estimates of M&SI of ESA-listed species. From 2002-2013, observer coverage was greater than 20% in the deep-set longline fishery and has been 100% in the shallow-set longline fishery since 2004. Accordingly, as required by MMPA section 118, a monitoring program is in place for both fisheries.

#### Take Reduction Plans

Subject to available funding, MMPA section 118 requires the development and implementation of a Take Reduction Plan (TRP) in cases where a strategic stock interacts with a Category I or II fishery. The three stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as endangered under the ESA (MMPA section 3(19)(C)).

In 2010, NMFS established a Take Reduction Team (TRT) to develop a TRP to address the incidental M&SI of Hawaii pelagic and MHI insular false killer whales in the Hawaii-based

deep-set and shallow-set longline fisheries. A TRP was implemented, through regulations, in November 2012 (77 FR 71260). The short- and long-term goals of a TRP are to reduce M&SI of marine mammals incidental to commercial fishing to levels below PBR and to insignificant levels approaching a zero M&SI rate (i.e., 10% of PBR), respectively. MMPA section 118(b)(2) states that fisheries maintaining such M&SI levels are not required to further reduce their M&SI rates.

The CNP stock of humpback whales and the Hawaii stock of sperm whales are also strategic stocks that interact with the Hawaii longline fisheries. However, the obligations to develop and implement a TRP are subject to the availability of funding. NMFS has insufficient funding available to simultaneously develop and implement TRPs for all strategic stocks that interact with Category I or Category II fisheries. As provided in MMPA section 118(f)(6)(A) and (f)(7), NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process, NMFS evaluated the available data on abundance and fishery-related mortality for the CNP stock of humpback whales and the Hawaii stock of sperm whales, and identified them as a lower priority compared to other marine mammal stocks and fisheries for establishing TRTs, based on M&SI levels below the stocks' PBR levels. The CNP stock of humpback whales and Hawaii stock of sperm whales have been designated as strategic because they are ESA-listed (MMPA section 3(19)(C)) and not because direct human-caused mortality exceeds PBR (MMPA section 3(19)(A)). As determined herein, M&SI for both stocks is currently low and is not expected to adversely affect either stock through effects on annual rates of recruitment or survival. Given these factors and NMFS' priorities, developing a TRP for these stocks will be deferred under section 118 as other stocks/fisheries are a higher priority for any available funding for developing new TRPs.



As noted in the summary above, all of the requirements to issue a permit to vessels that operate in the Federally-authorized Hawaii deep-set and shallow-set longline fisheries have been satisfied. Accordingly, NMFS proposes to issue a permit to participants in the Category I Hawaii deep-set longline fishery for the taking of CNP humpback whales, Hawaii sperm whales, and MHI insular false killer whales, and to the Category II Hawaii shallow-set longline fishery for the taking of CNP humpback whales incidental to the fisheries' operations. As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fisheries. For incidental taking of marine mammals to be authorized in Category III fisheries, any injuries or mortality must be reported to NMFS. NMFS solicits public comments on the proposed permit and the preliminary determinations supporting the permit.

Dated: June 06, 2014

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National Marine Fisheries Service.

[FR Doc. 2014-13683 Filed 06/11/2014 at 8:45 am; Publication Date: 06/12/2014]